

STATE OF VERMONT

HUMAN SERVICES BOARD

In re) Fair Hearings No. 12,918) & 12,956

Appeal of)

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INTRODUCTION

The petitioner appeals first a decision of the Department of Social Welfare terminating his Food Stamp, Medicaid, and Fuel Assistance benefits based on his alleged refusal to cooperate with providing verification requested by the Department. The petitioner's second appeal is of a subsequent decision of the Department that the same benefits should be terminated for an additional reason, namely that the petitioner's income is in excess of program maximums.

Because the issues in each hearing involve some of the same facts, these appeals were consolidated by the hearing officer.

FINDINGS OF FACT

1. The petitioner is a disabled man who is a recipient of Food Stamp, Medicaid, and Fuel Assistance benefits from the Department of Social Welfare. On or about May 20, 1994, the petitioner mentioned to the District Director of his local welfare office (who also handles his case) that he was going to get a lump sum disability benefit and a monthly income benefit from the Canadian government. He was informed by the Director that the benefits would be considered as a resource and income to him on the day that they were received. The petitioner responded, if that were so, he would send them back. He was told he would have to document his return of the benefits.

2. Pursuant to this information, the Director sent the petitioner a "Verification Request" form on May 25, 1994. That form made the following request of the petitioner:

Since you informed this dept. that you were going to receive in excess of \$9,000.00 from a disability pension in Canada I need to verify this. I also need to verify the monthly amount of this pension. If this income has been withdrawn then I will need verification of this.

The petitioner was given until June 6, 1994, to bring or send the proof of these items and was advised that they were needed to determine his eligibility for Food Stamps and Medicaid. He was further advised that he could request assistance with obtaining the proof and could request an extension of the deadline

for good cause by contacting the office before June 6, 1994. He was not advised that his failure to provide the information could trigger the termination of his benefits.

3. On June 7, 1994, the Department received a response dated June 4, 1994, from the petitioner which is attached hereto and incorporated by reference herein as Exhibit Number One. That letter, although couched in defiant language, contained requests for an extension of time to get the information from Canada and a request for clarification

of the type of verification expected and a reference to the regulation which necessitated the verification.

4. The Director interpreted that letter as a refusal to cooperate because he believed that the petitioner must have had information needed for verification in his possession and, although the petitioner had never been asked to verify his income before, the Director felt he should understand what proofs were necessary. He did not himself believe it would be necessary to contact Canada for the information and felt that the petitioner was stalling for time. He did not express those opinions, at that time, to the petitioner. In fact, he did not call or set up an appointment with the petitioner to discuss his concerns.

5. On June 9, 1994, the Director mailed a letter to the petitioner indicating that his Food Stamps would be cut off as of July 1, 1994; his Medicaid would be cut off as of June 18, 1994; and that he was no longer eligible for future fuel checks because "you did not provide proof of your situation" or "you have not provided information required to determine your eligibility."

6. The petitioner appealed that decision in a timely manner and continued to receive benefits pending appeal.

7. Although the petitioner's case was closed, the Department was in the process of investigating a fraud charge against him and, in pursuit of that goal, the Director solicited information from the Canadian government regarding the payment of benefits. On July 6, 1994, two days after the request, the Department of Health and Welfare in Canada confirmed via a FAX transmission that the petitioner was in receipt of a "Canada Pension Plan Disability Benefit, under the Canada/USA agreement". His first payment was made in May of 1994, for the period from June of 1992, to May of 1994, for a total of \$9,102.60 in Canadian dollars. His monthly benefit was confirmed as \$386.94 in Canadian dollars. The parties stipulated that in July, 1994, he received a check dated June of 1994 for \$386.93; in August, 1994, a check dated July of 1994 for \$386.93; in September, 1994, a check dated August of 1994, for \$386.94; and in October, 1994, a check dated September of 1994, for \$386.94, all in Canadian dollars from the Canadian government.

8. Based on this information, the Department issued a second notice closing the petitioner's Food Stamps as of August 1, 1994, Medicaid benefits as of July 20, 1994, and denying him automatic eligibility for fuel as of July 11, 1994, based on his receipt of excess income. He was told that he might be eligible for Medicaid benefits if he incurred \$1,190.28 in medical bills between June 30, 1994 and December 31, 1994. (The applied income figure noticed to the petitioner was mistaken and was corrected orally at the hearing to \$890.27.) The Department determined that the petitioner had received a lump sum equivalent to \$6,007.70 in U.S. currency and a monthly sum equivalent to \$253.38 in U.S. currency. That amount was added to the petitioner's \$650.10 in Social Security income for a total of \$905.48 monthly which income was further adjusted by using a \$131 standard deduction, a \$176.81 shelter deduction and a

\$6.10 medical expense deduction for a Food Stamp income of \$591.57 per month. For Medicaid purposes, the \$905.48 gross income was compared with the \$691.00 monthly figure for a single person household and found to be excessive. The petitioner lost his automatic eligibility for Fuel Assistance benefits because he was no longer eligible for any other benefits. He was advised that he could reapply after October 1, 1994 for an individual determination of his eligibility.

9. Because there is an ongoing fraud investigation in this matter, the petitioner was advised that information obtained at the hearing could be used against him and was given leave to consult an attorney. The matter was continued once for him to do so. He reappeared and stated that he had consulted with an attorney and desired to go ahead with the hearing although he chose not to testify (the burden of proof was on the Department). However, the petitioner asked in lieu of his testimony that a statement made in the course of a Supreme Court appeal be made a part of the record and the Department agreed. A copy of that document is attached as Exhibit Two and incorporated by reference herein. In that document, the petitioner claims that he has returned the lump sum to a trust in Canada although he presented no evidence of that fact at the hearing. He also claims that he has not cashed any of the monthly checks he received, a fact which was confirmed by his presentation of the original uncashed checks described in paragraph seven above, at the hearing.

ORDER

The decision of the Department terminating the petitioner's Medicaid, Food Stamp and fuel assistance benefits due to his alleged failure to cooperate in providing verification is reversed. The later decision terminating those same benefits based upon excess income is affirmed.

REASONS

The regulations in all the programs in question provide that benefits may be terminated if the recipient "refuses" or knowingly "fails" to provide verification of information necessary to determine eligibility. Food Stamp Manual § 273.2 (d)(1); Medicaid Manual § M133 and W.A.M. §2905(d) (Fuel Assistance). Verification of income is essential to each of these programs. The notice sent to the petitioner requested the verification of his income from Canada by a certain date (some eleven days from the date of mailing) "in order to determine his eligibility." The notice did not, however, warn the petitioner that his failure to respond or cooperate would result in the immediate termination of his benefits. The Board has held that the Department's regulations and due process require such notification before termination can occur in any of these programs. See Fair Hearing No. 8947. That glaring defect in the notice alone prevents the Department from terminating the petitioner's benefits for that cause.

Furthermore, it cannot be found that the petitioner's response, albeit one day late but prior to any action being taken in his case, could fairly be interpreted as an outright refusal to cooperate. The Food Stamp regulations, which are the most detailed of the three programs⁽¹⁾, explain that a refusal to cooperate can be found only when the recipient has "clearly demonstrated" that he would not take the actions that he could to complete the application (or income change report) process. F.S.M. § 273.2(d)(1).

The petitioner did not clearly demonstrate that he would not cooperate with the request. In spite of his belligerent tone, his response was a clear indication that he needed additional time and information in order to comply with the request. The Director had an obligation at that point to respond with an offer of assistance such as extra time, clarifications of information needed or help in obtaining the information. He, however, did not offer any help but instead terminated the benefits. Termination of basic subsistence

benefits is a serious action which should not occur until a true impasse is reached. Such an action should not have been used to indicate displeasure with the tone of the response or the personality of the recipient. That, unfortunately, is what appears to have happened in this case.⁽²⁾

Once the petitioner was terminated, he had little apparent incentive or reason to provide any additional information to the Department. The information obtained by the Department on its own initiative about a month later clearly indicated that the petitioner was being mailed checks by the Canadian government on a monthly basis which would affect his eligibility.⁽³⁾ The petitioner confirmed at the hearing that he had received those checks beginning in July of 1994, and was continuing to receive them on a monthly basis. The Department is correct that those additional checks, when added to his other income, make him over income for all three programs.⁽⁴⁾

The petitioner is making a grave mistake in believing that his failure to cash checks received by him from the Canadian government will prevent their inclusion as monthly income to him when his eligibility is determined for DSW administered programs. Those checks represent money available to the petitioner for his use for any purpose, including the purchase of food and medical services. As long as he has the ability to turn those checks into money available for his use, they will be counted as income under all programs. A legal renunciation of these assets consists of something more than keeping the checks and not cashing them.⁽⁵⁾ See Fair Hearing No. 8297.

Subsequent to the hearing on October 18, 1994, the petitioner raised the issue of the propriety of the Department contacting Canada with regard to his income. Although the petitioner must have known since at least mid-July of 1994, that the Department had taken this step, he did not raise this issue during either of the two meetings before the hearing at which time issues to be adjudicated were discussed. No evidence was taken on this issue at the hearing and no argument was offered by either party. As that issue was not before the hearing officer and as delay in developing that issue at this point would prejudice the Department which continues to pay benefits to the petitioner pending the conclusion of this appeal, no ruling will be made on that claim.

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1. The Fuel Assistance and Medicaid programs use the word "fail" without further definition. See W.A.M. 2905(d) and M 133.
2. Given the ease with which the Director was able to obtain verification later for the fraud investigation (via FAX in two days), one wonders why he didn't just take that step to expedite verification with regard to this psychologically disabled individual.
3. Ironically, if the Department had worked with the petitioner to verify his receipt of these checks a month earlier (or obtained this information itself), the anticipated receipt of income for July of 1993 probably would have justified the Department in terminating his benefits at an earlier date based upon excess income.
4. For purposes of the Food Stamp program, the petitioner had a net countable income of \$591.57. That amount is over the \$581.00 maximum for a one person household found at F.S.M. 273.9 and 273.10 and Procedures Manual 2590D. The petitioner should note that on October 1, 1994 the maximum was raised to \$614.00 and that he may now be eligible for a small benefit if he reapplies.

For purposes of the Medicaid program, the petitioner's gross income of \$905.48 was compared with the gross income maximum of \$691.00 for a one person household. M240, M350, M402, Procedures 2420B.

Under the fuel program, the petitioner is entitled to a \$75.00 deduction from his gross income before eligibility is determined. That resulting \$830.48 figure is larger than in the \$767.00 maximum contained in the regulations. W.A.M. § 2904.1, Procedures 2905A.

The petitioner did not dispute the accuracy of any of the calculations or standards used. His sole argument was against the use of his Canadian income.

5. The petitioner also argues that his claimed return of the lump sum bars the Department from considering its receipt as a disqualifying asset. However, the Department did not reach the issue of whether the petitioner is ineligible by virtue of excess resources since he was already disqualified on income. Therefore, for purposes of this decision, it is not necessary to determine whether the lump sum was returned or not.